

REMARKS/ARGUMENTS

With entry of this amendment, claims 5-8 and 21-22 are pending in this application. Claims 1-4 and 9 were previously canceled. Claims 10-20 have been canceled by this amendment. Claims 5, 6, 8, 21 and 22 have been amended. Support for the amendments to claims 5-6 and 21-22 is set forth in the following remarks. Claim 8 is amended to correct a minor typographical error. No new matter is added by these amendments. No amendment should be construed as acquiescence in any ground of rejection.

Interview Summary

Applicants thank the Examiner for the teleconference of January 13, 2005 with Dr. Joe Liebeschuetz and Mark Sandbaken, during which the outstanding issues were discussed. It was agreed that certain amendments would be sufficient to obviate the rejections under 35 U.S.C. § 112, first paragraph, with respect to enablement and new matter. The present response serves to enter these amendments. No agreement was reached during the interview on the rejection 35 U.S.C. § 112, first paragraph, concerning the written description rejection.

Claim Rejections under 35 USC § 112, first paragraph

Claims 5 to 8 are rejected under 35 USC §112, first paragraph, for allegedly being beyond the scope disclosed in the specification. The Examiner states that the present claims encompass the use and detection of sequences that are not described in the specification, such as full-length cDNAs and genomic DNAs. The Examiner asserts the use of the term comprising leaves the probe or primer open to sequences related to gene 513.

Although Applicants respectfully disagree, claim 5 has been amended to recite a "probe consisting of the complement of a segment of SEQ ID NO:1, optionally wherein the probe is linked to a label or vector nucleic acid." Claim 6 has been similarly amended to recite a "primer consisting of a segment of SEQ ID NO:1 or the complement thereof, optionally wherein the probe is linked to a label or vector nucleic acid." The Examiner's concerns with respect to

the claimed probes or primers including regions of gene 513 beyond those specifically contained in SEQ ID NO:1 are moot because the claims no longer include such regions.

As discussed during the interview, claims 5 and 6 have been amended to indicate that the probe and primer can optionally include a label or vector nucleic acid. It is appropriate that the probe or primer remain open to inclusion of such additional elements for purposes such as detection, cloning and protein expression, which are conventional in the art. Support for labeled probes and primers is shown in the specification, for example, at page 9, line 26 to page 10, line 3, and page 10, lines 12-29. Support for probes and primers consisting of segments of SEQ ID NO:1 linked to vector nucleic acids is shown in the specification, for example, at page 10, lines 12-29 (disclosing, for example, nick translation, which is typically performed on cloned sequences in a vector) and in SEQ ID NO:1 (containing 35 nucleotides of vector DNA). Further support for segments of SEQ ID NO:1 linked to vector nucleic acid is shown in the specification, for example, at page 11, lines 3-9. No new matter is added by these amendments.

Applicants therefore submit this rejection under 35 U.S.C. § 112, first paragraph, should be withdrawn.

Claim Rejections under 35 U.S.C. § 112, first paragraph

Claims 5-8 and 21-22 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly not enabled. Applicants respond below to each issue raised by the Examiner.

The Examiner says claims 5-8 and 21-22 encompass the detection of a cedar pollen allergy in any subject, including humans as well as other animal species. The Examiner says the claims are enabled for human subjects. Applicants have amended claims 5 and 6 to recite testing for a cedar pollen allergy in a human subject.

The Examiner also says claims 5, 8 and 21 are not enabled because the claims recite *inter alia* conducting hybridization with an RNA sample using a probe consisting of SEQ ID NO:1, which would not hybridize to the RNA. Applicants have amended claim 5 to omit reference to a probe consisting of a segment of SEQ ID NO:1.

Applicants therefore submit this rejection under 35 U.S.C. § 112, first paragraph, should be withdrawn.


Claim Rejections under 35 U.S.C. § 112, New Matter

Claims 5-8 and 21-22 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing new matter. The Examiner says the limitation “nucleotides 36-1171 of SEQ ID NO: 1” appears to represent new matter. The Examiner advised removing this limitation from claims 21-22. The office action acknowledges that the selection of functional embodiments within the scope of the claim would be entirely within the skill of the art and that the claims as amended are properly enabled. Applicants disagree with the basis of rejection for the reasons given previously, but have, amended the claims in accordance with the Examiner’s suggestion.

Applicants therefore submit this rejection under 35 U.S.C. § 112, first paragraph, should be withdrawn.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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